

NOTICE TO OFFERORS

REQUEST FOR PROPOSALS  
TO PROVIDE AN ONLINE VOTING SYSTEM AND CANDIDATE REGISTRATION  
FOR THE 2013 NEIGHBORHOOD BOARD ELECTIONS  
FOR THE NEIGHBORHOOD COMMISSION DEPARTMENT  
CITY AND COUNTY OF HONOLULU

SEALED PROPOSALS will be received up to 2:00 p.m. on October 23, 2012, in the Office of the Division of Purchasing, Department of Budget and Fiscal Services, City Hall, City and County of Honolulu, Honolulu, Hawaii to provide an Online Voting System and Candidate Registration for the 2013 Neighborhood Board Elections to the Neighborhood Commission, City and County of Honolulu.

Questions relating to this request for proposals may be directed to Glen Teramoto via the Purchasing Division mailbox at [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).

Form of proposal and specifications may be obtained from said Office of the Division of Purchasing upon request for Proposal Document No. RFP-MAY-550721.



Wendy K. Imamura  
Purchasing Administrator  
City and County of Honolulu

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## OFFEROR SUBMITTAL CHECKLIST

The Offeror is to submit the following documents **with the proposal**.  
Failure to do so may be cause for rejection of the proposal.

- ☐ Attachment 1: OFFER FORM OF-1
- ☐ Attachment 2: WAGE CERTIFICATE
- ☐ Attachment 3: CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
- ☐ Attachment 4: CERTIFICATE OF ACCEPTANCE OF SOLICITATION REQUIREMENTS
- ☐ Attachment 5: OFFER FORM OF-2
- ☐ Exhibits: OFFEROR'S TIMELINE AND PROJECT TASK CHART

## **SECTION ONE**

### **INTRODUCTION AND KEY DATES**

#### **1.01 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION**

BAFO	= Best and Final Offer
GET	= General Excise Tax
HAR	= Hawaii Administrative Rules
HRS	= Hawaii Revised Statutes
HST	= Hawaii Standard Time
Offeror	= Any individual, partnership, firm corporation, Joint venture, or representative or agent, submitting an offer in response to this solicitation
Officer-in-Charge	= Director of the Human Resources Department or designee
Procurement Officer	= Director of Budget and Fiscal Services
RFP	= Request for Proposals

#### **1.02 INTRODUCTION**

The City and County of Honolulu (the "City") desires to have an Online Voting System and Candidate Registration for the 2013 Neighborhood Board Elections.

#### **1.03 CANCELLATION**

The RFP may be cancelled and any or all proposals rejected in whole or in part, without liability, when it is determined to be in the best interest of the City.

#### **1.04 RFP SCHEDULE AND SIGNIFICANT DATES**

The schedule set out herein represents the City's best estimate of the schedule that will be followed. All times indicated are in Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due" date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Advertising of Request for Proposals	September 20, 2012
Deadline to Submit Written Questions	September 27, 2012
City's Response to Written Questions	October 2, 2012
Proposals Due and Opened	October 23, 2012
Discussion with Priority Listed Offerors	To be scheduled, if needed.
Best and Final Offer	To be scheduled, if needed.

## **SECTION TWO**

### **SCOPE OF WORK**

#### **2.01 GENERAL SCOPE OF WORK**

Objective:

It is the intent of the City to solicit proposals for an Online Voting System and Candidate Registration for the 2013 Neighborhood Board Elections for the Neighborhood Commission, City and County of Honolulu, Honolulu, Hawaii.

In addition to the online voting and candidate registration system, a supplemental alternative method of telephone call-in or paper ballot voting will be required.

#### **2.02 DETAILED SCOPE OF WORK**

The response to the Request for Proposals should include the following:

##### **Online Voting System:**

1. The online voting system shall be available for access by voters during the voting period of the Neighborhood Board elections. The system shall be available twenty-four (24) hours per day, seven (7) days per week from the opening day through the scheduled closing day.
2. The system being offered shall be capable of handling a minimum of 175,000 voters to approximately 250,000 voters. In the last known list of State Hawaii eligible voters, there were approximately 320,000 to 350,000 Oahu voters. Oahu residents who voted in the 2012 State of Hawaii election are pre-registered to vote in the Neighborhood Board elections.

Also, people who did not vote, voted but changed residences since the last election, or are non-citizen residents, will be filing a voter registration form in order to vote in the 2013 Neighborhood Board elections.

3. Currently there are thirty-three (33) Neighborhood Boards, which can be divided into districts and subdistricts. There are approximately four-hundred thirty-nine (439) seats on these Neighborhood Boards however, the voting for races may vary, if the seat is uncontested.
4. The Neighborhood Board elections shall all run at the same time during the voting period.
5. Voters will be allowed to vote for as many candidates as there are seats for that particular Board, District and/or Subdistrict. There will be no differently ranked, weighted or split votes.
6. The online voting system shall be capable of handling the amount of voters accessing their ballots simultaneously.
7. There are approximately one hundred thirty-one (131) possible ballot types; the number of election races vary, if a board or subdistrict has an uncontested race.

8. Ballots are required to be in English, other languages are not required.
9. Ballots are not required to be Section 508 compliant under the Rehabilitation Act. No special laws are applied for accessibility for all voters.
10. The system shall generate unique individual passcodes to be used by the voter to access his or her ballot. The secure, system-generated passcode shall be a mix of capital (upper case) letters and numbers, up to a maximum of six (6) characters.

The Contractor will prepare the secured electronic file, which shall include the passcode and mailing address of the corresponding voter. The electronic file will be transmitted to the City.

The CITY shall provide mailing addresses of registered voters.

The CITY shall mail the passcode to the individual voter.

11. The Contractor shall provide detailed measures being taken to ensure the program software will be secured from hacking or other compromises.
12. The Contractor shall provide a detailed description of the security measures in the system to verify the voter's identification information.
13. The Contractor shall provide a detailed description of the system's security that will be implemented to ensure that an automated system is not accessing the website created for the election process.
14. The Contractor shall provide information plans detailing their system's testing and verifications process. Testing and verification process shall include backup and recovery procedures.
15. The Contractor shall provide detailed documented proof of an audit trail of the voting process to verify that a ballot has been cast.
16. The Contractor shall provide detailed measures being taken to ensure how the housing of the hardware in their non-government facility and/or other sites will be secured.
17. Daily total tabulations and reports of successful ballots shall be electronically submitted to the Neighborhood Commission for each day of the voting period.
18. The Contractor shall be responsible to tabulate the votes following the close of the voting period. The results shall list each election race with the candidate with the highest number of votes first and the rest of the candidates in descending order. The results shall then be transmitted electronically to the Neighborhood Commission.
19. The Contractor shall record, tabulate and report the voting methods used by voters. (online; paper or telephone) The Contractor shall provide statistics of the frequency of online voting and alternative method to the Neighborhood Commission after the voting period ends.

20. A minimum of three (3) authorized City personnel shall be able to access the Neighborhood Board Election results.
21. The Contractor shall work with observers and auditors appointed by the City to certify the system and oversee the election process.
22. During the voting period, the Contractor shall furnish a minimum of one (1) personnel representing the company who will act as the Contractor's liaison, in addition to the technical support team.
23. Technical Assistance. The Contractor shall provide the number of technically qualified, knowledgeable personnel available to assist in the proper operation, training, testing and troubleshooting of the system.
24. No special software shall be required of the voter to use the online voting system, beyond a standing Secure Sockets Layer (SSL) enabled web browser.
25. The system being offered shall be compatible with all major internet browsers.
26. The Contractor shall provide and maintain a "backup" system for the program to ensure data is not lost.
27. The Contractor shall provide the server hardware to support the voting system during development, testing and production. The Contractor shall provide redundant, centralized, secured servers for the elections, as well as firewalls and hardened security methods. Hardware: Exact description of the hardware to be provided; make, model, type and other technical detail specifications shall be required. The description shall include any processes for the microserver component, how implementation to the database will be accessed.
28. The Contractor shall provide detailed measures being taken to ensure how the housing of the hardware in their non-government facility and/or other sites will be secured.
29. All equipment being offered shall be of suitable quality for its intended use and be of sufficient size and capability to handle the volume of responses anticipated for this election.
30. The Contractor shall provide verification of how the online voting system being provided meets or exceeds the standards set forth in the Help America Vote Act (HAVA).
31. Voter Participation for online voting:
  - a. The website enables a voter to log-in using a unique passcode,
  - b. A voter will be able to view profile information about a respective candidate in the voter's district or subdistrict.
  - c. The voter will then be presented with an online ballot generated for the voter. (Using data provided by the City.)

- d. The voter will be able to cast a vote online, once the polls have officially opened. The voter will be able to cast their vote from any computer or other equipment that has access to the internet.
  - e. In the event the voter makes a mistake when marking the ballot, the system shall allow the voter to correct the choice, as long as the ballot is not submitted.
  - f. Once the voter has made the applicable selections, the selections shall be reviewed by the voter before submitting the vote. The voter will have cast his or her vote when they click on "Submit".
  - g. After voting, the voter shall be issued a receipt confirming that the ballot was cast and counted. The receipt shall not disclose any voter information. The voter shall be able to print a copy of this receipt.
32. Offeror shall provide the description of the software program to be used in meeting the City's needs as specified and include any processes for the server component and how implementation to the database will be accessed.

**Online Candidate Registration:**

33. The online candidate registration system shall be available for access by candidates during the registration period for the Neighborhood Board elections. The system shall be available twenty-four (24) hours per day, seven (7) days per week.
34. The Contractor's online candidate registration system will allow the candidate to input the following information:
- a. Board Number
  - b. Subdistrict Number or At-Large
  - c. Gender
  - d. Last Name
  - e. First Name
  - f. Middle Initial
  - g. Residential Address
  - h. If no Street Address, description of residence (optional)
  - i. Mailing Address if different from residential address
  - j. Residential Telephone Number
  - k. Work Telephone Number
  - l. Email Address
  - m. Ballot Name (last, first, middle, suffix). Note: no professional titles.
  - n. The online candidate registration system will provide six (6) statements that the candidate will check signifying their agreement to each one.
  - o. The online candidate registration system will provide one (1) optional box that indicates the candidate has moved and authorizes the Neighborhood Commission to update the Neighborhood Board voter roll.
  - p. The online candidate registration form shall include an automated date submitted mark.
  - q. The candidate will be able to attach a 400 character profile.
  - r. The candidate will be able to attach a photograph.



35. The Contractor shall provide information plans detailing their system's testing and verification process. The testing and verification process shall include backup and recovery procedures.
36. Technical Assistance. The Contractor shall, provide the number of technically qualified, knowledgeable personnel available to assist in the proper operation, training, testing and troubleshooting of the system.
37. No special software shall be required of the candidate to use the online candidate registration system, beyond a standing Secure Sockets Layer (SSL) enabled web browser.
38. The system being offered shall be compatible with all major internet browsers.
39. The Contractor shall provide and maintain a "backup" system for this program to ensure data is not lost.
40. The Contractor shall provide the server hardware to support the online registration system during development, testing and production. The Contractor shall provide redundant, centralized, secured servers for the elections, as well as firewalls and hardened security methods. Hardware: Exact description of the hardware to be provided; make, model, type and other technical detail specifications shall be required. The description shall include any processes for the microserver component, how implementation to the database will be accessed.
41. The Contractor shall provide detailed measures being taken to ensure how the housing of the hardware in their non-government facility and/or other sites will be secured.
42. Any in-house quality control and quality assurance program that will be applied to services provided under this contract.
43. All equipment being offered shall be of suitable quality for its intended use and be of sufficient size and capability to handle the volume of candidate responses anticipated for this election. There are approximately four-hundred thirty-nine (439) seats on the City's Neighborhood Boards.
44. The online candidate registration system shall be able to produce daily reports containing all candidate information in an excel file. The results shall be transmitted electronically to the Neighborhood Commission.
45. During the candidate registration period, the Contractor shall furnish a minimum of one (1) personnel representing the company who will act as the Contractor's liaison, in addition to the technical support team.
46. A minimum of three (3) authorized City personnel shall be able to access the Candidate Registration.
47. Offeror shall provide the description of the software program to be used in meeting the City's needs as specified and include any processes for the server component and how implementation to the database will be accessed.

**Alternative Voting Method: Telephone Call-In OR Paper Ballot**

48. In addition to the Online Voting System, a supplemental alternative method of Telephone Call-In or Paper Ballot voting will be required.
- a. An alternative, Telephone Call-In or Paper Ballot process for the voter to cast his or her ballot shall be provided for those voters unable to access the internet or website.
  - b. The Offeror shall describe their plan and methodology of the process in detail, including but not limited to the type of equipment, number of personnel, security measures needed in assisting voters to cast their ballot confidentially.
  - c. The Telephone Call-In or Paper Ballot process shall be integrated with the online system being provided.
  - d. The Telephone Call-In or Paper Ballot method proposed shall ensure that each eligible voter will only be able to cast one (1) ballot.
  - e. The Contractor shall be responsible for all costs associated with the implementation of the alternative method.
  - f. The Contractor shall be responsible to record, maintain, tabulate and report the alternative method of votes being cast.

**Timeline and Project Tasks:**

49. The following is an estimated time frame from the Neighborhood Commission for the completion of the project. With the description of the tasks provided, the Offeror shall list the expected time frame to coordinate and put the program into operation for the **online voting system and candidate registration; alternative voting method: telephone call-in or paper ballot** completion times for each portion of work, similar to the chart below:

DESCRIPTION OF PROCESS TO BE FINALIZED	PROJECTED DATE
Candidate Registration Begins	December 1, 2012
Candidate Registration Ends - Deadline	February 22, 2013
Deadline for hard copy candidate registration forms postmarked 2/22/2013	March 1, 2013
Data delivered to Contractor	March 27, 2013
Voter unique passcode with voter list delivered to City	April 3, 2013
Voter password mailed out by the City / Website goes live	April 24, 2013
Voting begins	April 26, 2013
Voting ends	May 17, 2013
Contractor to deliver election results to the City	May 21, 2013 12:00 p.m.
Deadline to challenge results	June 10, 2013

**City Responsibilities:**

50. a. The City will provide the Contractor with accurate information as to the registration of each respective voter in his or her individual voting district and subdistrict. The City shall furnish the name, board, subdistrict and mailing address of eligible voters.
- b. The City will furnish the Contractor with any other required voter information.
- c. Upon receipt of the secured electronic file from the Contractor, which shall include the passcode and mailing address of the corresponding voter. The City will shall mail the passcode to the individual voter.
- d. The City shall be responsible for marketing information regarding usage of the program.
- e. The City shall furnish compatible computers at various locations throughout the island of Oahu for voter access.
- f. The City shall provide auditors and observers as required to certify and oversee the Neighborhood Board Election process.
- g. The City shall provide paper forms to candidates not using the online candidate registration system.

**2.03 INDEPENDENT CONTRACTOR**

The Contractor shall be deemed to be an independent Contractor and not the agent, servant, representative or employee of the City. Under no circumstances will the service be considered a contract of partnership or joint venture between the City and the Contractor.

**2.04 ADDITIONAL SERVICES OR PERSONNEL**

During the term of the contract, the City reserves the right to negotiate with the Contractor for the furnishing of additional services related to and within the scope of work of this contract, should additional related services be required by the City.

**2.05 OFFEROR AND CONTRACTOR ACCESSIBILITY**

All Offerors and Contractors must be accessible during normal City working hours, 7:45 a.m. to 4:30 p.m.(HST), by telephone, telephone answering machine, telephone answering service, or cellular phone.

If an Offeror is inaccessible by telephone or does not respond to any message left for the Offeror within twenty-four (24) hours from the time of the message, the City shall reserve the right to disqualify the Offeror from award.

Also, during the performance of the contract, if the Contractor is inaccessible by telephone or does not respond to any message left for the Contractor within twenty-four (24) hours from the time of the message, the City shall reserve the right to terminate the contract and suspend the Contractor from participating on any or all City

solicitations for a period of three (3) months or longer. The City also reserves the right to debar any non-performing Contractor for a period up to three years.

However, an Offeror or Contractor who is unable to comply with this telephone accessibility requirement may make alternate arrangements satisfactory to the City to permit daily communication between the Offeror or Contractor and the City.

Failure to comply with the provisions herein may be sufficient cause for the rejection of the proposal.

## **2.06 FURNISHING OF ELECTRONIC DOCUMENTS.**

In addition to any hard copy document production requirements, the Contractor shall provide electronic copies of all hard copy document work product prepared for the City under the terms of this contract. Hard copy work product includes plans, specifications, studies, reports and any other information that the Contractor is required to provide the City on paper under the terms of this contract. The required file formats and media requirements for the electronic documents will be as specified by the Officer-in-Charge.

## **2.07 ACT 291, SLH 2006,PROMPT PAYMENT ACT**

Offeror's are advised of the applicability of Act 291, SLH 2006, the Prompt Payment Act, which became effective on July 1, 2007 for contracts that are executed on or after July 1, 2007. All applicable references contained in the General Terms and Conditions, General Instructions to Offerors, Special Provisions and proposal documents are superseded by this Act.

## SECTION THREE

### PROPOSAL FORMAT AND CONTENT

#### 3.01 INTRODUCTION

One of the objectives of this RFP is to make proposals preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective. When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.

The proposal shall describe in detail, the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in SECTION TWO, SCOPE OF WORK.

Proposals must:

1. Include signed Attachment 1, Offer Form OF-1 with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and facsimile (fax) number of the person the City should contact regarding the Offeror's proposal.
2. Include signed Attachment 2, Wage Certificate with complete name, title and date.
3. Include signed Attachment 3, Certification of Compliance for Final Payment.
4. Include signed Attachment 4, Certificate of Acceptance of Solicitation Requirements to confirm that the Offeror shall comply with the requirements, provisions, terms and conditions specified in this RFP.
5. Include signed Attachment 5, Offer Form OF-2 Pricing
6. If subContractor(s) will be used, append a statement to Attachment 4 Certificate of Acceptance of Solicitation Requirements document from each subContractor, signed by an individual authorized to legally bind the subContractor and stating:
  - a. The general scope of work to be performed by the subContractor;
  - b. The subContractor's willingness to perform for the indicated.
7. Provide all of the information requested in this RFP in the order specified.

8. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.
- a. Offer Form OF-1 (See Attachment 1)
  - b. Wage Certification (See Attachment 2)
  - c. Certification of Compliance for Final Payment (See Attachment 3)
  - d. Certificate of Acceptance of Solicitation Requirements (See Attachment 4)
  - e. Offer Form OF-2 Pricing. (See Attachment 5)
  - f. Description and scope of services: Offeror's plan and methodology for the **Online Voting System**. (Refer to SECTION TWO, SCOPE OF WORK: Detailed Scope of Work; and SECTION FOUR, EVALUATION CRITERIA AND CONTRACTOR SELECTION: Online Voting System)
  - g. Description and scope of services: Offeror's plan and methodology for the **Online Candidate Registration**. (Refer to SECTION TWO, SCOPE OF WORK: Detailed Scope of Work; and SECTION FOUR, EVALUATION CRITERIA AND CONTRACTOR SELECTION: Online Candidate Registration)
  - h. Description and scope of services: Offeror's plan and methodology for **Alternative Voting Method: Telephone Call-In or Paper Ballot**. (Refer to SECTION TWO, SCOPE OF WORK: Detailed Scope of Work; and SECTION FOUR, EVALUATION CRITERIA AND CONTRACTOR SELECTION: Alternative Voting Method: Telephone Call-In or Paper Ballot)
  - i. **Qualification and Experience**. (Refer to SECTION THREE, PROPOSAL FORMAT AND CONTENT, 3.02 Qualification and Experience; and SECTION FOUR, EVALUATION CRITERIA AND CONTRACTOR SELECTION: paragraph 2)
  - j. **Timeline and Project Task**: Offeror shall provide its list of expected Completion times for each portion of work as specified. (Refer to SECTION TWO, SCOPE OF WORK: Detailed Scope of Work; and SECTION FOUR, EVALUATION CRITERIA AND CONTRACTOR SELECTION: Timeline and Project Task)

### **3.02 QUALIFICATIONS AND EXPERIENCE**

Offeror should describe the following: (Provide the same information for sub contractors, sub-consultants, etc. if applicable.)

1. Offeror shall have a minimum of two (2) years in the business of conducting online voting systems and candidate registration as specified in this RFP.
2. Specialized experience and technical competence. Include the names, qualifications and experience of key personnel providing services under this contract and length of employment with the firm.
3. Any in-house quality control and quality assurance program that will be applied to services provided under this contract.
4. Not less than three (3) references, with contact person, title and telephone number, for whom the Offeror provided similar services, including the dates such services were provided. References must be for services provided in the last four (4) years.

## SECTION FOUR

### EVALUATION CRITERIA AND CONTRACTOR SELECTION

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the City based on the evaluation criteria listed in this section.

**The total number of points used to score proposals received for this RFP is 130 Points.**

(1) Description and scope of services: 70 points

The Offeror's description of the scope of services being provided will be evaluated for comprehensiveness, methodology and compliance with all rules and regulations necessary to meet the City's program needs.

Online Voting System: (40 ) Points  
Online Candidate Registration: (10) Points

Alternative Voting Method: Telephone Call-In OR Paper Ballots (10) Points

Timeline and Project Task: (10) Points

(2) Qualifications and experience: 40 Points

This criteria establishes the work experiences, skills, knowledge and abilities of key personnel assigned to provide proper operation, training, testing and troubleshooting of the system.

Offeror shall have a minimum of two (2) years in the business of conducting online voting systems and candidate registration as specified in this RFP. (5) Points

Specialized experience and technical competence. Include the names, qualifications and experience of key personnel providing services under this contract and length of employment with the firm. (20) Points

Any in-house quality control and quality assurance program that will be applied to services provided under this contract. (5) Points

Not less than three (3) references, with contact person, title and telephone number, for whom the Offeror provided the services specified in this RFP, including the dates such services were provided. References must be for services provided in the last four (4) years. (10) Points

(4) Cost of services: 20 Points

Pricing evaluations shall be numerically scored in accordance with HAR 3-122-52.



## **SECTION FIVE**

### **SPECIAL PROVISIONS**

#### **5.01 OFFER QUALIFICATIONS**

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section 3.02, Qualifications and Experience, will likely have an adverse affect on Offeror's proposal evaluation.

#### **5.02 TERM OF CONTRACT**

Successful Offeror shall be required to enter into a formal written contract to commence work on this project. The term of the contract shall be for seven months, and shall begin on November 15, 2012 and end on July 1, 2013, unless otherwise mutually agreed upon between the parties hereto or otherwise specified in the award letter to be issued to the successful Contractor.

In the event there are unresolved election issues, this contract shall be automatically extended to resolve any election issue, at no additional cost to the City. The City will notify the contractor upon completion of this contract.

During the initial, the City reserves the right to terminate this contract with 30-day written notice. Contract extensions are contingent upon Contractor being compliant with Hawaii Compliance Express. Contractor is required to be compliant on Hawaii Compliance Express during the entire original contract period and during all extensions.

#### **5.03 CONTRACT ADMINISTRATOR**

For the purposes of this contract, the Executive Secretary of the Office of the Neighborhood Commission, or authorized representative is designated the Contract Administrator. The Executive Secretary can be reached at (808) 768-3710.

#### **5.04 OVERVIEW OF THE RFP PROCESS**

- a. The RFP is issued pursuant to Subchapter 6 of the HAR Chapter 3-122, implementing HRS Section 103D-303.
- b. The procurement process begins with the issuance of RFP and the formal response to any written questions or inquires regarding the RFP. Changes to the RFP will be made only by addendum.
- c. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposal and Offerors' proposals shall be open to public inspection after posting of award.

All proposals and other material submitted by Offerors become the property of the City and may be returned only at the City's option.

- d. The Procurement Officer, or an evaluation committee selected by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

- e. Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
- f. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
- g. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.
- h. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.04, RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
- i. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in Section Four.
- j. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the City agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.
- k. The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the City for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
- l. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the City.

## 5.05 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the City prior to the deadline for written questions as stated in Section 1.04 RFP Schedule and Significant Dates. This allows issuance of any necessary corrections and/or amendments to the RFP. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be submitted for City consideration prior to the due date for the solicitation in the form of a question for the City's consideration.

## 5.06 QUESTIONS PRIOR TO OPENING

All questions must be submitted in writing and directed to:

Wendy K. Imamura  
Purchasing Administrator  
City and County of Honolulu  
530 S. King Street  
Honolulu, Hawaii 96813  
Facsimile No. (808) 768-3299

The City will respond to written questions by the date indicated in Section One, 1.04 RFP Schedule and Significant Dates, or as amended.

## 5.07 PROPOSAL PREPARATION

- a. **OFFER FORM, PAGE OF-1.** See Attachment 1. Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate spaces on Offer Form page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material containing an original signature, indicating the Offeror's intent to be bound.

- b. **Original Proposal and Copies to be Submitted.** Offeror shall submit **one (1) original** proposal marked "ORIGINAL" and **four (4) copies** of the original marked "COPY". It is imperative to note that the Offeror submit only one original and the required number of copies. **DO NOT SUBMIT MORE THAN ONE ORIGINAL.**

Offeror is encouraged to submit typewritten offers. If handwritten, it should be clearly printed. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.

Costs for developing the Proposal are solely the responsibility of the Offer, whether or not any award results from this solicitation. The City will not reimburse such costs.

- c. **Preparation of Offer.** An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

## 5.08 PRICING

Pricing shall include labor, materials, supplies, all applicable taxes and any other costs incurred to provide the specified services.

**The pricing shall be the all-inclusive cost to the City and no other costs will be honored.**

## **5.09 SUBMISSION OF PROPOSAL**

The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

- (1) Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documents;
- (2) Become familiar with State, local, and federal laws, statutes, ordinances, rules and regulations that may in any manner affect cost, progress, or performance of the work.

Offers shall be received at the Office of the Purchasing Division, 530 South King Street, Room 115, Honolulu, Hawaii 96813, no later than the date and time stated in Section 1.04, RFP Schedule and Significant Dates. Timely receipt of offers shall be evidenced by the date and time registered by the Purchasing Division's time clock. Offers received after the deadline shall be returned unopened.

If the Offeror chooses to deliver its offer by United States Postal Service (USPS), please be aware that the USPS does not deliver directly to the City, but to a central mailroom. This may cause a delay in receipt by the City and the offer may reach the City after the deadline, resulting in automatic rejection.

## **5.10 PROPOSAL OPENING**

Proposals will be opened at the date, time, and place specified in Section 1.04, RFP Schedule and Significant Dates. Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and Offeror's proposals shall be open to public inspections after all parties sign the contract.

## **5.11 EVALUATION OF PROPOSALS**

The Procurement Officer or an evaluation committee of at least three (3) qualified City employees selected by the Procurement Officer shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set forth in Section Four of this RFP.

Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. Discussion may be conducted with priority listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without such discussions. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the best and final offer, if necessary.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three responsive, responsible offerors who submitted the highest-ranked proposals.

## 5.12 DISCUSSION WITH PRIORITY LISTED OFFERORS

Priority listed offerors shall have a discussion with the evaluation committee to discuss their proposal to ensure thorough, mutual understanding. The City in its sole discretion shall schedule the time and location for these discussions, normally within the timeframe indicated in Section 1.04, RFP Schedule and Significant Dates.

## 5.13 RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c) HRS:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Refer to the Award of Contract provision herein for instructions on furnishing the documents that are acceptable to the City as proof of compliance with the above-mentioned requirements.

## 5.14 AWARD

**Method of Award.** The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the City based on the evaluation criteria.

**Responsibility Offeror.** Reference HRS 103D-310(c). If compliance documents have not been submitted to the City prior to award, the Offeror shall produce documents to the procurement officer to demonstrate compliance with this section.

**HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to HRS §103D-328, the Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the City.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): [http://www.hawaii.gov/tax/a1\\_1alphalist.htm](http://www.hawaii.gov/tax/a1_1alphalist.htm)

DOTAX Forms by Fax/Mail: (808) 587-7572  
IRS: 1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX:	(808) 587-1488
IRS:	(808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the City. However, the tax clearance certificate shall be submitted to the City.

HRS Chapter 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 392 (Prepaid Health Care) requirements for award.

Instructions are as follows:

Pursuant to HRS § 103D-310(c), the Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the City. A photocopy of the certificate is acceptable to the City.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, Form LIR#27 which is available at <http://hawaii.gov/labor/forms> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the City.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the City. However, the certificate shall be submitted to the City.

**Compliance with Section 103D-310(c), HRS, for an entity doing business in the State.** The awarded Offeror shall be required to submit a *CERTIFICATE OF GOOD STANDNG* (Certificate issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from the date of issue from the date of issue and must be valid on the date it is received by the City. A photocopy of the certificate is acceptable to the City.

To obtain the Certificate, the Offerr must first be registered with the BREG. A sole proprieorship, however, is not required to register with the BREG, and therefore no required to submit the certificate.

On-line business registration and the Certificate are available at <http://hawaii.gov/dcca/breg>. To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

**Final Payment Requirements.** Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certificate of Compliance for Final Payment" (SPO Form-22), attached will be required for final payment. A copy of the Form is also available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" menu.

**Hawaii Compliance Express.** Alternately, instead of separately applying for these paper certificates at the various state agencies, vendors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of HRS Chapter 103D-310(c), shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the prior sections.

**Timely Submission of all Certificates.** The above certificates should be applied for and submitted to the City as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

#### **5.15 INSURANCE**

At the execution of the contract and thereafter at all times while the contract is in force, the Contractor shall, at his own expense, procure and maintain any and all insurance to cover Contractor's operations that may be required under any applicable federal, state or local law, statute or ordinance or regulation, including but not limited to applicable workers compensation. In addition, the Contractor shall maintain the following:

- a. Workers Compensation/Employer's Liability Insurance. Workers compensation limits shall be in accordance with State statutes, and Employers Liability limits shall not be less than \$100,000 each accident for bodily injury by accident, or \$100,000 each employee, \$1,000,000 aggregate, for bodily injury by disease.
- b. Commercial General Liability Insurance, with minimum limits of not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate shall cover liability arising from premises, operations, independent Contractors, products' completed operations, personal injury, and liability assumed under an insured contract.
- c. Auto Liability Insurance, including no-fault coverage, and if necessary commercial umbrella liability insurance, with a minimum limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of auto (included owned, hiring and non-owned autos) used in the performance of the contract.
- d. Professional Errors and Omissions Liability Insurance, with limit of not less than \$1,000,000 per occurrence, and covering loss or damage arising out of software failure, privacy invasion and/or breach of confidentiality, and computer viruses, arising out the errors or omissions of the Offeror or its employees.

The above policies providing coverages under 5.15 INSURANCE, subsections b and d, hereinabove, shall include the CITY AND COUNTY OF HONOLULU as additional insured.

All policies required herein shall provide for not less than thirty (30) days notice of cancellation (except for non-payment of premium). Contractor shall promptly notify the City within seven (7) calendar days of receipt of any notice of cancellation and shall provide proof of reinstatement or replacement of such policy before cancellation becomes effective.

If at any time the Contractor's insurance is expired, or otherwise not in force, the Director of BFS or an authorized representative may cancel the contract.

The successful Offeror shall, prior to execution of the contract, prior to execution of the contract, submit to the Director of Budget and Fiscal Services or an authorized representative of the Director of Budget and Fiscal Services, evidence of insurance coverage as specified herein. Failure to comply with the requirement as set forth shall be sufficient cause for the City to cancel the award of contract.

#### **5.16 OFFER ACCEPTANCE PERIOD**

The City's acceptance of offer, if any, will be made within sixty (60) calendar days after the opening of proposals. Prices quoted by the Offeror shall remain firm for a sixty (60) day period.

#### **5.17 CONTRACT EXECUTION**

Successful Offeror receiving award shall enter into a formal written contract. No work is to be undertaken by the Contractor prior to the commencement date. The City is not liable for any work, contract, costs, expenses loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

#### **5.18 CANCELLATION OF RFP AND PROPOSAL REJECTION**

The City reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the City, pursuant to HAR 3-122-96 through 3-122-97.

#### **5.19 PROTEST**

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of proposals. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

Any protest pursuant to § 103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, Director of Budget and Fiscal Services, 530 South King Street, Room 208, Honolulu, Hawaii 96813.

#### **5.20 SUBCONTRACTING**

No work or services shall be subcontracted or assigned without the prior written approval of the City. No subcontract shall under any circumstances relieve the Contractor of his/her obligations and liability under this contract with the City. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.



## **5.21 PAYMENT**

HRS Section 103-10, provides that the City shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the City will reject any offer submitted with a condition requiring payment within a shorter period.

## **5.22 ADDITIONAL TERMS AND CONDITIONS**

The City reserves the right to add terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

## **5.23 ASSIGNMENTS**

Notwithstanding any other provisions herein, assignment of work under the contract will not be permitted without a written request from the Contractor and written approval by the Director of Budget and Fiscal Services

## **5.24 INDEMNITY**

In the performance of the contract, the Contractor shall conduct its activities so as not to endanger any person and shall indemnify, save and hold harmless the City and all its officers, agents and employees from any and all claims for losses, injuries, damages and liabilities to persons or property occasioned, in whole or in part, the acts or omissions of the Contractor, its officers, agents, employees or any person(s) under the control of the Contractor.

## **5.25 BREACH OF CONTRACT**

In the event the Contractor should fail or is unwilling or unable to provide the services provided for herein or fail in any other respect to faithfully observe or perform any covenant or condition of the Contract, the City will have the right to terminate the contract with thirty (30) calendar days written notice and may exercise such rights or claims as it may have, at law or in equity, to obtain compliance with the contract and/or damages.

## **5.26 COMPLIANCE WITH LAWS**

The Contractor will observe, perform and comply with all laws, statutes, ordinances, rules and regulations of the Federal Government, State of Hawaii, City and County of Honolulu or any department or agency of the above.

## **5.27 NON-DISCRIMINATION**

The Contractor shall comply with all applicable Federal and State laws prohibiting discrimination against any person on the grounds of race, color national origin, religion, creed, sex, age sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Contractor or in participation in the benefits of any program or activity funded in whole or in part by the City.

## **5.28 CONFIDENTIAL INFORMATION**

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer should be so advised in writing and provided with justification to support confidentiality claim. Price is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Pursuant to HAR Section 3-122-58, the Procurement Officer shall consult with Corporation Counsel and make a written determination in accordance with HRS Chapter 92F. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS Section 92F-42(12).

## **5.29 CONFLICTS OF INTEREST**

The Contractor represents that neither the Contractor, nor any employee or agent of the Contractor, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Contractor's performance of this contract.

## **5.30 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS Section 11-205.5, which states that campaign contributions are prohibited from a State and county government Contractor during the term of the contract if the Contractor is paid with funds appropriated by a legislative body.

## **5.31 PROPOSAL SECURITY**

Proposal security is not required for this contract.

## **5.32 CONTACT WITH EMPLOYEES OF THE USING AGENCY**

Offerors may not contact the employees of the using agency concerning this request for proposals during the solicitation process.

## **5.33 NOTICE OF INTENT TO SUBMIT A PROPOSAL**

No notice of intent to submit a proposal is required.

## **5.34 CONDITIONING PROPOSALS UPON OTHER AWARDS NOT ACCEPTABLE**

Any offer which is conditioned upon receiving award of both the particular contract being solicited and another contract shall be deemed non-responsive and not acceptable.

### **5.35 SEXUAL HARASSMENT POLICY**

The selected Contractor must comply with the Revised Ordinances of Honolulu, section 1-18 on sexual harassment policy set forth in the General Terms and Conditions.

### **5.36 SPECIAL PROVISIONS, REQUIREMENTS OR SPECIFICATIONS**

Whenever separate proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, are referred to or attached hereto, they shall be considered a part of the proposal solicitation or contract as if contained therein. Should any of the proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, conflict with these general instructions to offerors, said proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, shall govern.

Should any of these instructions, proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, and general terms and conditions conflict with any applicable statutory provisions of Chapter 103, 103D Hawaii Revised Statutes, as amended, HAR, City Charter, or City Ordinances, the statutory provisions or rules shall govern.

### **5.37 WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES OF CONTRACTORS SUPPLYING SERVICES.**

Section 103-55, H.R.S., provides that before any prospective bidder, except those specifically exempted by the said Act, shall be entitled to submit any bid for the performance of any Contract to supply services in excess of \$25,000 to any governmental agency, the offeror shall certify that the services to be performed will be performed under the following conditions:

## **SECTION SIX**

### **ATTACHMENTS**

Attachment 1:	OFFER FORM OF-1
Attachment 2:	WAGE CERTIFICATE
Attachment 3:	CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
Attachment 4:	CERTIFICATE OF ACCEPTANCE OF SOLICITATION REQUIREMENTS
Attachment 5:	OFFEROR FORM OF-2

**OFFER FORM  
OF-1  
ONLINE VOTING SYSTEM AND CANDIDATE REGISTRATION  
NEIGHBORHOOD COMMISSION  
CITY AND COUNTY OF HONOLULU**

**RFP-MAY-550721**

Director of Budget and Fiscal Services  
City and County of Honolulu  
Honolulu, Hawaii 96813

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contract, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

It is understood and agreed that the services to be provided herein are being furnished for the exclusive use of the City and County of Honolulu.

The undersigned represents: (Check one only)

- ☐ A Hawaii business incorporated or organized under the laws of the State of Hawaii; OR
- ☐ A Compliant Non-Hawaii business not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: \_\_\_\_\_

Offeror is:

- ☐ Sole Proprietor   ☐ Partnership   ☐ Corporation   ☐ Joint Venture
- ☐ Other \_\_\_\_\_

OFFEROR SHALL BE RESPONSIBLE TO CONFIRM THE EXISTENCE OF ANY ADDENDUM TO THIS SOLICITATION BY TELEPHONING (808) 768-3948 or 768-3963.

ACKNOWLEDGE ADDENDUM (IF ANY) BY INDICATING THE DATE OF RECEIPT.

ADDENDUM NO. 1

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ADDENDUM NO. 2

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ADDENDUM NO. 3

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ADDENDUM NO. 4

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ADDENDUM NO. 5

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Respectfully submitted:

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Authorized (Original) Signature

---

Name and Title (Please Type or Print)

\*

---

Exact Legal Name of Company (Offeror)

\*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Cellular Telephone No. \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Person to Contact if Awarded: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

## WAGE CERTIFICATE

**Submit this form with the proposal.**

To: Director of Budget and Fiscal Services, City and County of Honolulu

Subject: Proposal No.: RFP-MAY-550721

Description of Project: ONLINE VOTING SYSTEM AND CANDIDATE  
REGISTRATION for the Neighborhood Commission, City and County of Honolulu

Pursuant to Section 103-55, Hawaii Revised Statutes and the provisions of Section 5, WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES OF CONTRACTORS SUPPLYING SERVICES, of the Special Provisions, which provide that before any prospective offeror, except those specifically exempted by the said Act, shall be entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed under this agreement for the Department of Human Resources will be performed under the following conditions:

1. The services to be rendered under this agreement shall be performed by employees paid at the following wages or salaries which are not less than the wages or salaries paid to public officers and employees for similar work when the Contractor's employees are performing the services for the Department of Human Resources under this agreement.
2. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages and safety will be fully complied with.
3. To comply with the conditions of Section 5.37, WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES OF CONTRACTORS SUPPLYING SERVICES, of the Special Provisions and other applicable provisions, a offeror who is not exempted by the said Act shall complete and submit this Wage Certification.

Offeror: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Attachment 2



**Submit this form with the proposal.**

\_\_\_\_\_ affirms it is in  
(Company Name)

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker’s Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

Moreover, \_\_\_\_\_  
(Company Name)

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**RFP-MAY-550721**  
**CERTIFICATE OF ACCEPTANCE**  
**OF SOLICITATION REQUIREMENTS**

It is understood and agreed that the undersigned acknowledges the following:

1. The Offeror has read this solicitation document including any addenda, in its entirety;
2. The Offeror understands and agrees to furnish, deliver, and perform the requirements of the solicitation in strict compliance with the solicitation document as amended, including any specifications, plans, and scope of work descriptions, without any exceptions, if awarded a contract;
3. The Offeror understands and agrees that no substitution or alternate brands may be furnished without the written approval of the City (see "Request for Substitution" in the General Instructions to Offerors);
4. The Offeror understands that the Contractor shall resolve any noncompliance with the requirements of the awarded contract at the Contractor's own expense;
5. The Offeror will make all modifications or customizations to the brand and model being offered as necessary to meet all specifications, at no additional cost. Offeror guarantees that all modifications or customizations done to meet specifications shall not affect the quality or operation of the product; and
6. The Offeror understands that **FAILURE TO MEET CONTRACT REQUIREMENTS WILL CONSTITUTE A BREACH OF CONTRACT THAT MAY RESULT IN SUSPENSION OR DEBARMENT, AND THE EXERCISE OF RIGHTS AND REMEDIES AS PROVIDED BY LAW.** Contract requirements include any specifications, plans, and scope of work descriptions;
7. The undersigned is an authorized representative of the Offeror and can legally obligate the Offeror thereto.

Offeror: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Phone: \_\_\_\_\_

**OFFER FORM  
OF-2**

**ONLINE VOTING SYSTEM AND CANDIDATE REGISTRATION  
NEIGHBORHOOD COMMISSION  
CITY AND COUNTY OF HONOLULU**

**RFP-MAY-550721**

Furnishing of all required facilities, equipment, services and personnel to provide an Online Voting System and Candidate Registration and the Alternative Voting Method for the Neighborhood Commission, complete as specified hereinafter.

\$ \_\_\_\_\_

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

Offeror \_\_\_\_\_  
Name of Company

1/9/2007

## GENERAL INSTRUCTIONS TO OFFERORS

1. PREPARATION AND SUBMISSION OF PROPOSALS. All proposals shall be prepared in accordance with these instructions set forth below and as set forth in this solicitation for proposals.

All proposals shall be submitted to:

Division of Purchasing  
Department of Budget and Fiscal Services  
City Hall, Room 115  
530 S. King Street  
Honolulu, Hawaii 96813

Proposals must be received no later than the time and date as specified in this solicitation for proposals. Proposals received after this time and date will not be accepted and will be returned to the offerors unopened.

The offeror shall submit an original and the specified number of copies of its proposal.

Proposals shall be submitted in an envelope(s) or container(s) to the Purchasing Division at the time and place indicated herein. The proposal number as indicated by the Purchasing Division, offeror's name and address, and opening date of the request for proposals must be printed on the outside of the envelope or container. The proposal envelope or container must be time stamped and deposited at the designated location in the Division of Purchasing, Room 115, 530 South King Street, Honolulu, Hawaii 96813. All proposal envelopes or containers must bear the Purchasing Division's time stamp mark. Envelopes and containers which are not time stamped or which are time stamped after the specified proposal opening time and date shall be rejected and shall be returned to the offeror unopened. Offerors are responsible for the submission of their proposals on a timely basis. However, a late proposal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the offices of the Director of Budget and Fiscal Services or the Division of Purchasing.

The Director of Budget and Fiscal Services shall reserve the right to reject any and/or all proposals not submitted in accordance with the instructions of this proposal solicitation. Proposals which modify, add, or delete any term, consideration, or condition, other than those contemplated by this request for proposals, may be rejected.

Proposals shall be signed in ink by the person or persons duly authorized to sign the proposal to bind the offeror and shall be accompanied by such evidence of the authority of the person or persons to sign on behalf of and bind the offeror, as the Contracting Officer deems satisfactory.

Before submitting a proposal, the offeror shall be responsible for reading and examining the specifications, requirements, terms and conditions, amendments (if any), and any other sections or documents attached hereto, and all applicable federal, State, or City laws, ordinances, resolutions rules, regulations, codes, circulars, guidelines, environmental impact statements, and other standards or requirements. Submission of a proposal shall be deemed verification of such reading and examination. No offeror shall in any way be relieved of any obligation with respect to its proposal or the contract due to its failure or neglect to secure, receive, examine, familiarize itself with, acquaint itself with, or understand the work requirements, the Request for Proposals or any amendment hereto, applicable standards or requirements, or existing conditions, difficulties, restrictions or obstacles. No claim for additional compensation to the offeror shall be allowed based on lack of knowledge or misunderstanding.

An offeror shall not submit more than one proposal for this solicitation for proposals. If an offeror submits more than one proposal, all proposals of the offeror shall be rejected; provided that, if an offeror clearly indicates

a primary proposal, it shall be considered for award as though it is the only proposal submitted by the offeror. A person shall be considered to have submitted more than one proposal if the person submits more than one proposal under the person's name, or through the person's agents, or through joint ventures, partnerships, or corporations in which the person has more than twenty-five percent (25%) interest in each of them or through any combination thereof.

If there are reasonable grounds to believe that collusion exists among two or more offerors, all of the proposals of the parties to such collusion shall be rejected, and the parties to such collusion shall be prohibited from receiving awards on future contracts with the City.

Proposals shall not be submitted by telephone or by use of facsimile transmission, telex, telegraph, or other written forms of electronic communication. Any such proposals shall be rejected.

All costs to prepare and submit a proposal shall be at the offeror's expense. The City will not reimburse any proposal costs nor any best and final offer costs incurred by any offeror, any prospective offeror, or any other person.

Unless otherwise specified herein, all proposals offered shall be valid for a minimum of one hundred twenty (120) calendar days. The Director may request offerors to extend the time during which the City may accept their offers.

2. REQUESTS FOR CLARIFICATIONS OR INTERPRETATIONS. A prospective offeror may submit a request in writing to the Contracting Officer for clarification or interpretation of any aspect of the Request for Proposals.

If it should appear to a prospective offeror that a conflict or inconsistency exists between different parts of the Request for Proposals or that the Request for Proposals is in conflict with any federal, State or City law, ordinance, rule, regulation, or other standard or requirement, then the prospective offeror shall submit a written request for clarification to the Contracting Officer.

Unless otherwise provided in the Request for Proposals, written requests for clarification or interpretation of the Request for Proposals may be submitted by the use of facsimile transmission, telex, telegraph, or other written forms of electronic communication. No responses will be made to oral inquiries, unless otherwise provided for or permitted as a part of this Request for Proposals. Only written clarifications or interpretations of the Request for Proposals, issued as addenda to the Request for Proposals, shall be official and binding on the City. All other forms of communication with any officer, employee or agent of the City shall not be binding on the City.

Prospective offerors shall submit in writing or by fax requests for clarification or interpretation regarding the Request for Proposal to:

Purchasing Administrator  
Purchasing Division, Department of Budget and Fiscal Services  
City and County of Honolulu  
530 South King Street, Room 115  
Honolulu, Hawaii 96813

Facsimile telephone number is (808) 768-3299.

Requests for clarification or interpretation must be submitted in writing or by facsimile machine and must be received by the Purchasing Administrator no later than ten (10) calendar days prior to the proposal opening or due date, unless the Director of Budget and Fiscal Services determines that it is in the best interest of the City to accept any inquiry submitted after the deadline. The City will respond in a timely manner to such requests to all offerors. The City shall not be obligated to respond to requests not received on a timely basis.

Receipt of requests for clarification or interpretation shall be evidenced by the date-time stamp indicated by the time stamp machine or the date-time stamp indicated by the facsimile machine of the City Purchasing

Division. The offeror submitting the request shall be responsible for its delivery. The City shall respond in a timely manner. The City shall not be obligated to respond to requests for clarifications or interpretations not received on a timely basis.

3. SUPPLEMENTAL INSTRUCTIONS OR CHANGES. Any supplemental instructions or changes will be in the form of written addenda to this solicitation. Any addenda will be mailed, faxed, emailed, or made available for pick up by all prospective offerors, prior to the due date for submittal of proposals. It shall be presumed that any addenda so issued have been received by an offeror and such addenda shall become a part of the proposal submittal.

Offerors who have not obtained this proposal solicitation document directly from the City Purchasing Division shall be responsible for immediately notifying the City Purchasing Division to receive all written addenda on a timely basis. Offerors who do not so notify the Purchasing Division and submit proposals without receipt of all addenda issued may be deemed to have submitted proposals not responsive to this request for proposal solicitation.

4. EXTENSION OF PROPOSAL DUE DATE. The City may extend the due date to submit a proposal. Any such extension shall be made by a written amendment to this Request for Proposals.

5. TAXES. Unless otherwise specified in this solicitation document, the offeror shall include and be responsible for paying all taxes, which shall be applicable to the goods or services or the furnishing or sale thereof.

A prospective offeror may call the Department of Taxation of the State of Hawaii at (800) 222-3229 for assistance as to whether the State of Hawaii general excise tax, the applicable use tax, or other taxes will apply to the offeror or Contractor.

6. RESPONSIBILITY OF OFFERORS. In accordance with §3-122-112, as amended, Hawaii Administrative Rules, the successful Offeror shall produce documents, as specified below, to the City Purchasing Division at the time of award of the contract, unless otherwise specified below or in the Special Provisions of the bid document, to demonstrate compliance with this section.

- a. HRS Chapter 237 tax clearance requirement for award and final payment. Instructions are as follows:

Pursuant to §103D-328, Hawaii Revised Statutes (HRS) as amended, the successful Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by the City Purchasing Division.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information):  
[http://www.state.hi.us/tax/a1\\_1alphalist.htm](http://www.state.hi.us/tax/a1_1alphalist.htm)  
DOTAX Forms by Fax/Mail: (808) 587-7572  
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488  
IRS: (808) 539-1573

The application for the tax clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the City Purchasing Division.

The successful Offeror must obtain and provide the tax clearance within twenty-one (21) calendar days of the City's request, unless otherwise specified in the Special Provisions of this bid document, or otherwise authorized by the City Purchasing Administrator. Failure to obtain the tax clearance within the specified time shall result in rejection of the bid and the City may award the contract to another vendor.

DOTAX and the IRS will provide extra certified copies of the clearances upon you request. Hence, you may want to request extra certified copies if you anticipate entering into several other potential contracts.

Contractor is also required to submit a tax clearance certificate for final payment on any contract over \$50,000. The tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

- b. HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Instructions are as follows:

Pursuant to §103D-310(c), HRS, successful Offeror shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The Certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the City Purchasing Division. A photocopy of the certificate is acceptable.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the City Purchasing Division.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the City Purchasing Division.

- c. Requirement for award. To be eligible for award, the Offeror must comply as follows:

Hawaii Business. A business entity referred to as a "Hawaii business", is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, Offeror shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. An Offeror's status as sole proprietor or other business entity and its business street address will be used to confirm that the Offeror is a Hawaii business.

Compliant non-Hawaii business. A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is

registered to do business in the State. As evidence of compliance, Offeror shall submit a CERTIFICATE OF GOOD STANDING.

To obtain a CERTIFICATE OF GOOD STANDING go online to [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com) and follow the prompt instructions. To register or to obtain a "Certificate of Good Standing" by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). The "Certificate of Good Standing" is valid for six months from date of issue and must be valid on the date it is received by the City Purchasing Division. Offerors are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA. A photocopy of the certificate is acceptable.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the City Purchasing Division as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

Final Payment Requirements. In addition to a tax clearance certificate an original "Certification of Compliance for Final Payment (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the Chapter 103D, HRS, pop-up menu. These requirements do not apply to contracts less than \$50,000, or any small purchase contract; nor do they apply to price or vendor list purchases.

7. RIGHT TO DISQUALIFY. The City reserves the right to disqualify any respondent to this RFP on the basis of any real or apparent conflict of interest that is disclosed by the responses submitted or other data available to the City. Any such disqualification shall be at the City's sole discretion.

8. MODIFICATIONS TO PROPOSAL. Offerors may modify their proposals prior to the established proposal due date and time by the following documents:

- a. A written notice received by the Director of Budget and Fiscal Services or the Purchasing Administrator, stating that a modification to the proposal is submitted; and
- b. The actual modifications securely sealed in a separate envelope or container, accompanying the written notice.

9. OPENING OF PROPOSALS. After the proposal due date, proposals shall not be publicly opened, but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be shown only to City personnel having legitimate interest in them.

Proposals of the offeror(s) shall be open to public inspection after the notice of award has been posted.

10. RETURN OF MATERIALS, CONFIDENTIAL INFORMATION OF OFFEROR. Submittals to the City under this RFP shall become the property of the City. The City will not return proposals or any information submitted in connection with a proposal, unless the offeror has properly requested and designated portions of the proposal as confidential at the time of submittal and such portions of the proposal are determined by the City or by statutes to be confidential pursuant to applicable provisions of the Hawaii Revised Statutes, as amended, or Hawaii Administrative Rules.

An offeror requesting non-disclosure of data shall make such data readily separable from its proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.

Notwithstanding the above, prices, makes and models, or catalogue numbers of items offered, deliveries, and terms of payment shall not be considered confidential.



11. WITHDRAWALS. Offerors may withdraw their proposals prior to the proposal due date and time by the following documents:

- a. A written notice received in the office of the Purchasing Division prior to the proposal due date and time;
- b. A written notice faxed to the Purchasing Division prior to the proposal due date and time; or
- c. A telegraphic message received by telephone by the Purchasing Division from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at such office prior to the proposal due date and time.

12. REQUESTS FOR EXCEPTIONS. An offeror may request an exception to any requirement of the Request for Proposals. Such request shall be in writing and be fully supported with technical data, test results, or other pertinent information evidencing that if the City grants the requested exception, a condition equal to or better than that required by the Request for Proposals will result, without substantial change to cost or time requirements. The Contracting Officer shall be the sole judge of equality and suitability of an exception and the Contracting Officer's decision shall be final. The prospective offeror requesting the exception shall be responsible for providing all information or samples, at its own expense, that the Contracting Officer deems necessary to consider a request for an exception.

Written requests for exceptions shall be submitted to the Purchasing Administrator no later than ten (10) calendar days prior to the proposal opening or due date, unless the Director of Budget and Fiscal Services determines that it is in the best interest of the City to accept the request submitted after the deadline. Receipt of requests for exceptions shall be evidenced by the date-time stamp of the time stamp machine of the City Purchasing Division or the date-time stamp indicated by the facsimile machine of the City Purchasing Division. The offeror submitting the request shall be responsible for its delivery. The City shall respond in a timely manner. The City shall not be obligated to respond to requests for exceptions not received on a timely basis.

13. UNAUTHORIZED COMMUNICATIONS WITH CONTRACTING OFFICER. Except as otherwise authorized in the Request for Proposals, offerors and their representatives shall not make any contact or communications with the Contracting Officer, any member of a Selection Committee or Evaluation Team appointed by the Contracting Officer, or any other City officer, employee or agent directly serving the procurement activity.

14. WAIVER OF INFORMALITIES. The Contracting Officer may waive or accept any minor informalities, irregularities, deviations or other defects, if in the Contracting Officer's judgment such waiver or acceptance will be in the best interest of the City.

15. AWARD OF CONTRACT, RIGHT TO CANCEL REQUEST FOR PROPOSALS, REJECT PROPOSALS. Unless otherwise stipulated, the Director will issue a written award of the contract, if an award is made, to the responsive and responsible offeror submitting the proposal deemed most advantageous to the City based on the evaluation and selection criteria specified herein.

The Director reserves the right to cancel this request for proposals, reject any or all proposals or any part thereof, or waive any defects, when in the Director's opinion, such cancellation, rejection or waiver will be in the best interest of the City.

A notice of award of the contract, if any, shall be posted at the following location  
Office of the Purchasing Division  
530 S. King Street, Room 115  
Honolulu, Hawaii 96813

16. CANCELLATION OF AWARD. The Director reserves the right to cancel the award of any contract any time before the signing of the same.

17. STATE OR LOCAL DEBARMENT. Proposals submitted by offerors who have been debarred from bidding under Section 103D-702 or 103-48, Hawaii Revised Statutes, or any other applicable State or City law, ordinance, rule and regulation, if the debarment is still in effect on the proposal due date, shall be rejected.

Also, proposals submitted by offerors who are under suspension from bidding under any federal law, rule, or regulation, or proposals submitted by any offeror in which a person so suspended has an interest, direct or indirect, may be rejected, if the suspension is still in effect on the date of opening of proposals.

18. NON-RESPONSIVE OR NON-RESPONSIBLE OFFERORS. Proposals submitted by offerors who have been determined to be non-responsive or non-responsible shall be rejected.

19. CONDITIONAL PROPOSALS. Proposals which are conditional may be rejected.

20. ANTI-COMPETITIVE PRACTICES. If there is any evidence indicating that two or more offerors are in collusion to restrict competition or have otherwise engaged in anti-competitive practices relating to the procurement, the proposals of all such offerors shall be rejected and such evidence may be a cause for the disqualification of the participants in any future procurement.

21. OMISSIONS. Proposals which contain any omissions, erasures, alterations or additions not allowed or called for in the Request for Proposals, or irregularities of any kind, may be rejected; provided that errors may be crossed out and correction inserted by printing in ink or by typewriter, if the errors and/or corrections are initialed in ink by the person or persons signing the proposal.

22. CONTRACT. The successful offeror must within ten (10) calendar days after notification of the award, or within such further time as the Director may authorize, enter into a contract. The contract shall be based on the proposal offered and the requirements and terms and conditions set forth under this Request for Proposals.

23. PROTEST PROCEDURES. Protests on this request for proposals or award of contract shall be made pursuant to Hawaii Revised Statutes Section 103D, as amended, and applicable provisions of the Hawaii Administrative Rules.

24. SPECIAL PROVISIONS, REQUIREMENTS OR SPECIFICATIONS. Whenever separate proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, are referred to or attached hereto, they shall be considered a part of the proposal solicitation or contract as if contained therein. Should any of the proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, conflict with these general instructions to offerors, said proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, shall govern.

Should any of these instructions, proposals, special provisions, terms and conditions, special instructions, requirements, specifications or plans, attachments, and general terms and conditions conflict with any applicable statutory provisions of Chapter 103, 103D Hawaii Revised Statutes, as amended, HAR, City Charter, or City Ordinances, the statutory provisions or rules shall govern.

25. SELECTION AND AWARD. The procedure for the selection and award for this procurement or project is specified below.

- a. A City panel shall review the proposals submitted.
- b. All responsive and responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list.

Discussions, if any, with offerors will be limited to only priority-listed offerors.

If numerous acceptable and potentially acceptable proposals are submitted, the City may rank

the proposals and limit discussions, if any, to at least three offerors who submit the highest-ranked proposals.

Offerors are cautioned that discussions may not be conducted and award may be made on acceptance of the most favorable initial proposal.

- c. If deemed appropriate or deemed necessary by the panel, the panel shall issue priority-listed offerors a request for best and final offers.
- d. Award shall be made to the responsive and responsible offeror whose offer the Contracting Officer deems most advantageous to the City, considering the evaluation criteria specified herein.

26. PUBLIC INSPECTION. For this procurement or project, the contract file, except those portions the offeror designates in writing as trade secrets or other proprietary data to be confidential, shall be available for public inspection after the contract is signed by all parties to the contract.

If a person requests to inspect the portions of an offeror's proposal designated as confidential, the inspection shall be subject to written determination by the City's Corporation Counsel for confidentiality in accordance with Chapter 92F, Hawaii Revised Statutes.

1/9/2007

**GENERAL TERMS AND CONDITIONS  
FOR COMPETITIVE SEALED PROPOSALS  
FOR GOODS AND SERVICES  
FOR THE CITY AND COUNTY OF HONOLULU**

1. **DEFINITIONS.** Whenever used herein:
  - a. **"CITY"** means the City and County of Honolulu.
  - b. **"CHANGE ORDER"** means a written order signed by the Contracting Officer of the City directing the Contractor to make changes to the contract.
  - c. **"CHIEF PROCUREMENT OFFICER"** means the Director of Budget and Fiscal Services of the City.
  - d. **"CONTRACT"** means the written agreement covering the performance of the services or providing any goods required herein. It shall include these general terms and conditions and any special provisions attached hereto. It shall also include all modifications of the contract by supplemental agreements thereto in writing and written orders of the Director and Officer-in-Charge.
  - e. **"CONTRACT MODIFICATION"** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
  - f. **"CONTRACTING OFFICER"** means the Director of Budget and Fiscal Services of the City.
  - g. **"CONTRACTOR"** means the person, as defined in Section 103-41, Hawaii Revised Statutes, duly entering into the contract with the City in connection with these General Terms and Conditions.
  - h. **"DAYS"** means calendar days unless otherwise specified.
  - i. **"DIRECTOR"** means the Director of Budget and Fiscal Services of the City, who has been duly authorized to act as the Contracting Officer of the City.
  - j. **"HAR"** refers to Hawaii Administrative Rules of the Procurement Policy Board of the State of Hawaii. Copies of the HAR are available for examination at the Purchasing Division and are available for purchase at the State of Hawaii, Department of Accounting and General Services.
  - k. **"OFFEROR"** or **"PROPOSER"** means a vendor who responds to the request for proposals.
  - l. **"OFFICER IN CHARGE"** means the Director of the Department of the City requesting the goods or services specified herein.
  - m. **"PURCHASING DIVISION"** means the Division of Purchasing, Department of

Budget and Fiscal Services of the City.

- n. **"SOLICITATION"** means a request for proposals ("RFP") used in the competitive sealed proposal process for the purpose of obtaining proposals to perform a City contract.
- o. **"STATE"** means State of Hawaii, unless otherwise specified.
- p. **"WORK"** means the furnishing by the Contractor of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

2. **GENERAL TERMS AND CONDITIONS INTENDED TO COVER.** These General Terms and Conditions are intended to cover furnishing and paying for goods and services called for, including delivery to the places designated.

3. **SPECIAL PROVISIONS, REQUIREMENTS OR SPECIFICATIONS.** Whenever separate proposals, special provisions, requirements, specifications or plans are referred to or attached hereto, they shall be considered a part of the contract as if contained herein. Should any of the proposals, special provisions, requirements, specifications or plans conflict with these General Terms and Conditions, said proposals, special provisions, requirements, specifications or plans shall govern.

Should any of the proposals, special provisions, requirements, specifications or plans, and general terms and conditions conflict with any applicable statutory provisions of Chapter 103, 103D Hawaii Revised Statutes, as amended, HAR, City Charter, or City Ordinances, the statutory provisions or rules shall govern.

4. **CONSTRUCTION OF CONTRACT.** The masculine shall be deemed to embrace and include the feminine and the singular shall be deemed to embrace and include the plural, whenever required in the context of the contract.

5. **INTERPRETATION OF BID PROPOSAL, SPECIAL PROVISIONS, REQUIREMENTS, PLANS, SPECIFICATIONS, AND GENERAL TERMS AND CONDITIONS.** In case of any doubt as to the meaning of any proposal, special provisions, requirements specifications, plans, and general terms and conditions, the interpretation by the Director shall control. All directions and explanations required or necessary to complete the contract shall be formulated by the Director or an authorized representative.

6. **EXECUTION OF CONTRACT.** This contract shall not be considered binding upon the City until the contract has been fully and properly executed by all the parties thereto.

7. **CONTRACT ADMINISTRATION.** It is expressly understood and agreed that the Contractor is an independent contractor, with the authority to control and direct the performance and details of the work and services herein contemplated; however, the City retains the general right of inspection by a designated representative in order to judge, whether in the City's opinion, such work is being performed by the Contractor in accordance with the terms of this agreement.

8. **COMPLIANCE WITH CONTRACT TERMS, ETC.** The work shall be completed in conformity with the specifications and each and every requirement of the general terms and conditions and other provisions forming a part of the contract. In the event the Contractor fails to so perform, the chief procurement officer, in addition to any other recourse, reserves the right to suspend the Contractor from bidding on any or all contracts of the City, State of Hawaii, or other counties of the State, pursuant to Chapter 3-126, HAR.

**9. CHANGE ORDERS AND MODIFICATIONS.** The Contractor will not undertake to perform any portion of the contract work affected by changes until authorized by the Director or an authorized representative in writing or until a change order or modification has been approved and issued.

**10. STANDARD ITEM.** Whenever the word "standard" is used in these specifications to describe any item, piece of equipment, or parts assembly, it shall be construed to mean that the items or assemblies so described shall be the newest, regular, and current product of the manufacturer thereof. Such product shall be identified by a model or other designation without modification or omission of any of its usual parts, or the substitution of others, except as hereinafter specified, and the details, capacities and ratings must conform in every respect to the said manufacturer's catalog or other printed matter describing the items or assemblies. Standard sub-assemblies, accessories fittings and finishes shall be construed to be those which are regularly furnished as a part of the principal unit or assembly and shall be included in the selling price thereof.

**11. QUALITY OF GOODS.** Unless otherwise specified, any goods required by the bid or proposal solicitation or contract shall be new and the best quality of its kind, and shall be goods of recognized manufacturers, unless otherwise specified in the Special Provisions, System Requirements or other section of the contract.

**12. INSURANCE REQUIREMENTS.** Whenever insurance coverages are required of the Contractor under this contract, the Contractor shall keep in force the insurance policy(s) for the duration of the contract period, unless otherwise specified. Failure to comply shall be regarded as material default under this contract, entitling the City to exercise any or all of the remedies provided in this contract for a default of the Contractor.

**13. INDEMNITY.** The Contractor shall indemnify, hold harmless and defend the City and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgements of any character that may be brought against the City by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by the Contractor, or any of his officers, employees, subcontractors, assignees, or representatives, in the performance of the contract. In the event the City and the Contractor are found to be joint tortfeasors with respect to any such injuries or damages, the Contractor's obligations to indemnify the City under this section shall extend only to the Contractor's pro rata share of negligence as determined in accordance with section 663-12, Hawaii Revised Statutes as amended.

**14. PATENTED ARTICLE.** The Contractor shall hold the City and all its officers, agents, servants and employees harmless against all claims arising from the use of any patented article, patented process, or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the Contractor and considered to be originally included within the proposal and contract price.

**15. CHANGE ORDERS.**

- a. Change order. By written order, at any time, and without notice to any surety, the Director may, unilaterally, order of the Contractor: 1) Changes in the work within the general scope of the contract; and 2) Changes in the time of performance of the contract that do not alter the scope of the contract work.
- b. Adjustments of price or performance time. If any change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and

the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined, where applicable, in accordance with the Price Adjustment clause of the General Terms and Conditions or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the Director or an authorized City representative promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as the City deems reasonable. The right of the Contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract or these terms.

- c. Time period for claim. Within ten days after receipt of a written change order unless the period is extended by the Director or an authorized City representative in writing, the Contractor shall respond with a claim for an adjustment. The requirement for a timely written response shall not be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this contract.
- e. Claims not barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for breach of contract.

#### **16. MODIFICATIONS TO CONTRACT.**

- a. Contract modification. By a written order, at any time, and without notice to any surety, the Director or an authorized representative, subject to mutual agreement of the parties to the contract and subject to all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:
  - 1) Drawings, designs, or specifications, for the goods to be furnished;
  - 2) Method of shipment or packing;
  - 3) Place of delivery;
  - 4) Description of services to be performed;
  - 5) Time of performance (i.e., hours of the day, days of the week, etc.);
  - 6) Place of performance of the services; or
  - 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.
- b. Adjustments of price or time for performance. If any modification increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract or as negotiated.
- c. Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under this contract.

- d. Claims not barred. In the absence of a contract modification, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for a breach of contract.

**17. PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS.**

- a. Prompt payment. Any money, other than retainage, paid to a Contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- b. Upon final payment to the Contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

**18. STOP WORK ORDERS.**

- a. Order to stop work. The Director, may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding sixty days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this paragraph. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Director shall either: (1) Cancel the stop work order; or (2) Terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.
- b. Cancellation or expiration of the order. If a stop work order issued under this section is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if: (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and (2) The Contractor asserts a claim for such an adjustment within thirty days after the end of the period of work stoppage; provided that, if the Director decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. Termination of stopped work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.



**19. PRICE ADJUSTMENT.** Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

a. Price adjustment.

- 1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- 2) By unit prices specified in the contract or subsequently agreed upon;
- 3) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- 4) In such other manner as the parties may mutually agree; or
- 5) In the absence of agreement between the parties, by a unilateral determination by the Director of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Director in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, Hawaii Administrative Rules (HAR).

b. Submission of cost or pricing data. The Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122, HAR.

**20. PAYMENTS.** Payments will be authorized by the Director after completion of performance or delivery and acceptance by the Director of all materials, goods, and services stipulated in the contract or Purchase Order and after the invoices, in triplicate, are received by the ordering agency, Attention: Fiscal Officer. The invoices must list the following information: contract and confirmation purchase order numbers (if any), item numbers, description of items, quantities, unit prices, and extended totals. Further, in the event that the Contractor is providing equipment under the contract or Purchase Order, the Contractor must also provide the following information with the submittal of its invoices: equipment make, model, serial number, and the specific equipment delivery or installation location, including delivery address and building facility room number, if such information is made available to the Contractor. Various equipment that make up a system shall be listed individually. Providing the aforementioned equipment information is required before payment is made to the Contractor. Attached is a SAMPLE OF EQUIPMENT LISTING showing how a Contractor shall provide the equipment information required. Payments will be computed in accordance with any applicable unit prices bid.

Payments will be made as soon thereafter as the regular course of business will allow; provided, however, that payments shall be made no later than thirty (30) calendar days following receipt of the statement for goods received and services completed.

Unless otherwise specified, partial payment(s) for any item or portion of any item under the contract may be permitted. Said partial payment(s) may be authorized by the Officer in Charge or an authorized representative, provided that delivery and acceptance of the item is made before the contract delivery date and upon submittal of proper invoices and substantiating documents by the Contractor. Said authorization by the Officer in Charge or an authorized representative shall be by endorsement on the submitted invoice; no other action will be required to effect the partial payment(s).

Also, in accordance with Sections 103-53 and 103D, HRS as amended, final payment under any contract of \$50,000 or more shall be withheld until the Contractor secures and the City receives tax clearances from the Director of Taxation of the State of Hawaii and

the Internal Revenue Service to the effect that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued, under Title 14 that are administered by the Department of Taxation of the State of Hawaii and under the Internal Revenue Code against the Contractor have been paid. The tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate an original "Certification of Compliance for Final Payment (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the Chapter 103D, HRS, pop-up menu. These requirements do not apply to contracts less than \$50,000, or any small purchase contract; nor do they apply to price or vendor list purchases.

**21. SUBLETTING.** The Contractor shall not sublet any of the work to be performed without written permission from the Director. The subcontracting shall not, under any circumstances, relieve the Contractor of the Contractor's obligation and liability under the contract with the City. All persons engaged in performing the work covered by the contract shall be considered as agents of the Contractor, and shall be subject to the provisions thereof.

**22. VARIATION IN QUANTITY FOR DEFINITE QUANTITY CONTRACT.** This clause shall apply to definite quantity goods or services contracts only. Upon the agreement of the parties, the quantity of goods or services or both specified in the contract may be increased by a maximum of twenty percent provided: the unit prices will remain the same except for any price adjustments otherwise applicable; and the Director or an authorized representative makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

**23. ASSIGNMENT OF MONEY DUE OR PAYABLE.** No assignment of money due or to become due to a Contractor on any City contract shall be made without prior written consent of the Director. Such consent shall be given and such an assignment shall be accepted only if the assignment meets the following requirements:

- a. The assignment must be money due or to become due on a formal contract. A formal contract is a contract in writing which has been approved as to form and legality by the Corporation Counsel, and certified as to availability of funds by the Director of Budget and Fiscal Services. A formal contract does not include a Purchase Order or letter contract.
- b. The assignment must be the entire amount due or to become due on the contract and the amount due or to become due must be not less than one thousand dollars (\$1,000).

**24. CONTRACT NOT BINDING UNLESS FUNDS AVAILABLE.** No contract awarded shall be binding or of any force and effect unless the Director has, in accordance with section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the Director shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that this section shall not apply to any contract in which the total amount payable to the Contractor cannot be accurately

estimated at the time the contract is to be awarded.

In any contract involving not only City funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of City funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the Contractor, only out of federal funds to be received from the federal government. This paragraph shall be liberally construed so as not to hinder or impede the City in contracting for any project involving financial aid from the federal government.

**25. NOVATION OR CHANGE OF NAME.**

- a. No assignment of contract. No City contract is transferable, or otherwise assignable, without the written consent of the Director provided, that a Contractor may assign monies receivable under a contract after due notice to the City, subject to the assignment of money due or payable clause specified under this contract.
- b. Recognition of a successor in interest; assignment. When in the best interest of the City, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and unless the transferor guarantees performance of the contract by the transferee, the transferee shall furnish all required bonds.
- c. Change of name. When a contractor requests to change the name in which it holds a contract with the City, the Director shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.
- d. Reports. All change of name or novation agreements effected hereunder shall be reported to the Director within thirty days of the date that the agreement becomes effective.
- e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of paragraphs (a) through (c), when a contractor holds contracts with more than one purchasing agency of the City, the novation or change of name agreements herein authorized shall be processed only through the office of the Director.

**26. CLAIMS BASED ON CITY'S ACTIONS OR OMISSIONS.**

- a. Notice of Claim. If any action or omission on the part of the Director or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- 1) The Contractor shall have given written notice to the Director or designee of such officer: (a) Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission; or (b) Within thirty days after the Contractor knows of such action or omission if the Contractor did not have such knowledge prior to the commencement of the work; or (c) Within such further time as may be allowed by the Director in writing.
  - 2) This notice shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Director or designee of such officer, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Director or designee of such officer;
  - 3) The notice required by subparagraph (1) describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
  - 4) The Contractor maintains and, upon request, makes available to the Director within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- b. Limitation of clause. Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any City officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
- c. Adjustments of price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

## **27. TERMINATION FOR DEFAULT.**

- a. Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Director may notify the Contractor in writing of the delay or non-performance, and if not cured in ten days or any longer time specified in writing by the Director, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform.

Should the Contractor commit the same or similar substantial breaches of the contract on multiple occasions, the first correction, if any, by the Contractor of such breaches may be considered to be only a temporary correction, and not a cure. In such event the contract may be terminated.

In the event of termination in whole or in part, the Director may procure similar goods or services in a manner and upon terms deemed appropriate by the Director. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- b. Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the Director, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the City has an interest.
- c. Compensation. Payment for completed goods delivered and accepted by the City shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Director; if the parties fail to agree, the Director shall set an amount subject to the Contractor's rights under chapter 3-126, HAR. The City may withhold from amounts due the Contractor such sums as the Director deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the Contractor has notified the Director within fifteen days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State of Hawaii and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements.

Upon request of the Contractor, the Director shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contract, "Termination". As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of the clause, or that the delay was excusable under the provisions of paragraph (d), Excuse for nonperformance or delayed performance of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the City, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the City, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the Contractor's rights under chapter 3-126, HAR.

- f. Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## 28. TERMINATION FOR CONVENIENCE.

- a. Termination for convenience. When the interests of the City so require, the Director may terminate this contract in whole or in part, for the convenience of the City. The Director shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. Contractor's obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The Director may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the City. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- c. Right to goods. The Director may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Director: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The Contractor shall, upon direction of the Director, protect and preserve property in the possession of the Contractor in which the City has an interest. If the Director does not exercise this right, the Contractor shall use the Contractor's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the City has breached the contract by exercise of the termination for convenience clause.

- d. Compensation:
  - 1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Director may pay the Contractor, if at all, an amount set in accordance with subparagraph 3) below.
  - 2) The Director and the Contractor may agree to settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of goods and manufacturing materials under paragraph c. of this clause, and the contract price of the work not terminated.

- 3) Absent complete agreement under subparagraph 2), the Director shall pay the Contractor the following amounts, provided payments agreed to under subparagraph 2) shall not duplicate payments under this subparagraph for the following:
- a) Contract prices for goods or services accepted under the contract;
  - b) Costs incurred in preparing to perform and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - c) Subject to the prior approval of the procurement office, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph b. of this clause. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph 3)b).
  - d) The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 2), and the contract price of work not terminated.
  - e) Cost claimed, agreed to, or established under subparagraph 2) and 3) shall be in accordance with chapter 3-123, HAR.

## 29. DISPUTES.

- a. All controversies between the City and the Contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Director, in writing, within one hundred twenty calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that if the Director does not issue a written decision, within one hundred twenty calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.
- b. The Director shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- c. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the circuit court of the State of Hawaii within the six months from the date of receipt of the decision.
- d. The Contractor shall comply with any decision of the Director and proceed diligently with performance of this contract pending final resolution by the circuit court of the State of Hawaii of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the City; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Director has made a

written determination that continuation of work under the contract is essential to the public health and safety.

**30. STATUTORY OR ORDINANCE REQUIREMENTS.** The applicable provisions of Chapter 103, 103D Hawaii Revised Statutes, as amended, Title 3, Department of Accounting and General Services of the State of Hawaii Administrative Rules ("HAR"), and the City Charter and the City Ordinances shall be deemed to be a part of the contract as though fully set forth therein.

The Contractor shall at all times observe, perform, and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Officer in Charge in writing.

**31. REMEDIES.** Any dispute arising under or out of this contract is subject to chapter 3-126, HAR.

**32. INTEREST.** Interest on amounts ultimately determined to be due to a Contractor or the City shall be payable at the applicable statutory rate presently set forth in Hawaii Revised Statutes, Section 103-10 (Payments for goods and services).

**33. SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY.** All City contractors must comply with City Ordinance 93-84 on sexual harassment. All contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the employer's business and includes the following:

- a. Prohibitions against an officer's or employee's sexual harassment of the following:
  - 1) Another officer or employee of the employer;
  - 2) An individual under consideration for employment with the employer; or
  - 3) An individual doing business with the employer;
- b. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under subdivision a;
- c. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
- d. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;



- e. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
- f. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
- g. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"
- h. Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and
- i. For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this section shall be in effect for at least the duration of the employer's contract with the City.

The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by City Ordinance 93-84.

City Ordinance 93-84 is on file and available for viewing in the Purchasing Division. Bidders or contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 S. King Street, Honolulu, Hawaii.